

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

KEVIN O. SMITH, )  
Petitioner, )  
v. ) No. 4:09-CV-1389 CAS  
DAVE DORMIRE, )  
Respondent. )

## **MEMORANDUM AND ORDER**

This matter is before the Court on the petition of Kevin O. Smith for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The petition will be summarily dismissed.

Petitioner challenges the constitutionality of his convictions for sodomy and felonious restraint, entered on January 20, 1994, in the Circuit Court of City of St. Louis, Missouri.

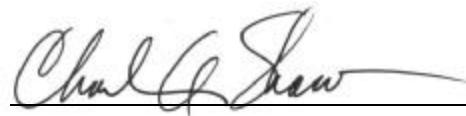
The Court’s records show that petitioner has previously brought a § 2254 petition for a writ of habeas corpus challenging his January 20, 1994, conviction, and that this Court dismissed the petition as time-barred. See Smith v. Moore, No. 4:04-CV-654 CAS (E.D. Mo.). Title 28 U.S.C. § 2244(b)(3)(A) provides that “[b]efore a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.”

Because petitioner did not obtain permission from the Eighth Circuit Court of Appeals to maintain the instant § 2254 application in this Court, the Court lacks authority to grant petitioner the relief he seeks. As a result, the Court will summarily dismiss this action. See Rule 4 of the Rules Governing § 2254 Cases.

Accordingly,

**IT IS HEREBY ORDERED** that petitioner's petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 is **DISMISSED**. [Doc. 1]

**IT IS FURTHER ORDERED** that the Court will not issue a certificate of appealability. 28 U.S.C. § 2253.



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CHARLES A. SHAW  
UNITED STATES DISTRICT JUDGE

Dated this 9th day of September, 2009.